

## TECHNICAL ASSISTANCE – RETENTION AREA REQUESTS

Prepared by the State Personnel Board in the Department of Personnel and Administration

When certified employees are separated from state service in a layoff, they usually have retention rights throughout the principal department in which they are employed. However, a department's executive director may request State Personnel Board ("Board") approval to limit retention rights to major divisions, institutions, or colleges within the principal department. C.R.S. § 24-50-124. The department director must make the request and obtain Board approval in advance of the layoff. Board Rule R-7-13, 4 Code of Colo. Reg. 801.

The Board's regular meeting is on the third Tuesday of the month. Board staff mails the agenda and packet of information to the Board's members 12 days before the meeting. If the Board does not receive a complete request before the packet is mailed, the request will not be considered until the next regular meeting.

The Board is required to consider employees' performance evaluations and seniority in establishing procedures for administering layoffs and retention rights. C.R.S. § 24-50-124. To comply with that requirement, the Board must receive sufficient information from which it can conclude that the department's plan will adequately protect performance and seniority.

The Board has identified certain types of information that will assist it in reviewing requests to limit retention areas. Those requests should include the following information:

- A description of the workforce, including demographic information for each division, information about the types of classifications employed in each division, information such as the range or average seniority of the employees in each classification and division, and information such as the range or average performance evaluation of the employees in each classification and division;
- If known, information concerning the divisions where layoffs are most likely to occur based upon funding sources or other data available to the department, but without identification of specific positions or classifications likely to be affected;
- The business justification for the request to limit retention areas, which should include an explanation of other options considered and the department's reasons for rejecting those other options. This justification should specifically include an explanation how the department balanced the need to protect performance and seniority against other business needs, such as the need to ensure continuity of services and the need to avoid disruption in services by retaining employees with specialized qualifications who would not be retained if the retention area remained department-wide. Normally, this explanation should state why continuity cannot be ensured, and disruption

cannot be avoided, by requiring those specialized qualifications to be met by a displacing employee from another division or by using special qualifications as a matrix factor;

- Any other information the department believes will assist the Board in making its decision whether to approve the request.

If the Board approves a request to limit retention areas, it will ordinarily restrict the period of the limitation to the remainder of the fiscal year and restrict the limitation to occupied positions, so that employees may continue to have retention rights to vacant positions throughout the department. If a Department requests any alteration of these restrictions, the Department must provide a business justification for that request, which the Board may or may not approve.

The Department has the burden of demonstrating that performance and seniority considerations will not be compromised without an important business justification, and must provide factual information in support of its request. If the Board concludes that the Department has not provided sufficient justification, or if it decides that the business justification submitted by the Department is outweighed by the negative effect on performance or seniority, the Board may deny the request. Unless and until the Board grants a request to limit retention areas, employees of the Department will have retention rights throughout the Department. If the Board deems it necessary or desirable, it may request additional information before making a decision. There is no time limit within which the Board must make its decision.